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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 11-10789-REG

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In the Matter of:

KOREA LINE CORPORATION,

Debtor.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

June 21, 2011
10:46 AM

B E F O R E:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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HEARING re Doc #60 Motion to Vacate Certain Orders of
Attachment and Turnover of Attached Funds Pursuant to SS 1507,
1521(A) (5) and 1521(B) .

Transcribed by: Pnina Eilberg

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A P P E A R A N C E S :

HOLLAND & KNIGHT LLP

Attorneys for Korea Line

31 West 52nd Street

New York, NY 10019

BY: JAMES H. POWER, ESQ.

WARREN GLUCK, ESQ.

SIMMS SHOWERS, LLP

Attorneys for World Fuel Services

20 S. Charles Street

Suite 702

Baltimore, MD 21201

BY: J. STEPHEN SIMMS, ESQ. (TELEPHONICALLY)

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P R O C E E D I N G S

THE COURT: Well, as I said we have a very busy calendar today. Let me get appearances on Korea Lines and then I want everybody to sit down or stand by because I have some preliminary comments. For Korea Lines, petitioners?

MR. POWER: James Power of Holland & Knight for the receivers of Korea Line Corporation.

THE COURT: Okay, Mr. Power. And do I have Mr. Simms for World Fuel Services?

MR. SIMMS: Yes, Your Honor.

THE COURT: All right. Thank you. All right. Gentlemen, make your presentations as you see fit but my questions, principally to you, Mr. Simms, is how in the world can your client have laid in what amounts to an attachment on what you did after you knew about the insolvency proceeding in Korea? Such an act, if performed in the United States, would have been unthinkable and a slam dunk violation of the automatic stay. And as I understand the Korea law, Korea doesn't countenance that kind of activity any more than the U.S. courts do. So please tell me the basis upon which you took that action, whether it was just some kind of feeling that Korea wasn't entitled to extra territorial protection or maybe arrogance or what.

And then my other question to you, Mr. Simms, is why this isn't controlled by the decisions of Judge Glenn and by

1 Judge Leisure in Atlas, and forgive me, I have to go back over
2 my notes to find Judge Leisure's decision. It seems to me, the
3 only thing that is even fairly up for debate is whether the
4 fact that you had a gun to Korea Line's head so it could free
5 up its ship and it had to substitute collateral, takes this out
6 of the Atlas principle. So I'll need to hear from you on that,
7 Mr. Simms.

8 Mr. Power, especially since Mr. Simms is participating
9 by phone, would you use the main lectern, please?

10 MR. POWER: Yes, Your Honor. Would you like me to go
11 up first?

12 THE COURT: Yes.

13 MR. POWER: Okay.

14 THE COURT: Yes. Technically this is your motion,
15 right?

16 MR. POWER: Yes it is, Your Honor.

17 THE COURT: Go ahead.

18 MR. POWER: So obviously James Power for the
19 receivers, in order, because the Court does have a busy docket
20 today, I'd like to streamline this particular motion, if I may.
21 There has been some additional discussions between myself and
22 counsel. I understand that World Fuels has been paid some
23 portion, I cannot attest to what because it's been primarily
24 paid by a third party, owner of the vessels, so the amount that
25 was being claimed has now been reduced by payment. However, to

1 some extent that's immaterial in the sense that, as our motions
2 state, and this is the turnover motion that we filed in support
3 of a turnover of 706,000 dollars that was posted post-Korea
4 Line liquidation in Korea, for the release of bunkers that were
5 aboard the vessel New Horizon.

6 Again, we stand on our papers however from the
7 opposition of World Fuels there is, perhaps, a point that the
8 Court would like further input on and that's the issue of what
9 effect does custodia legis fees, if in fact they're even
10 awardable in this particular case, have on the Court's ability
11 to issue a turnover. I submit, custodia legis fee -- there is
12 no pending order for custodia legis fees.

13 THE COURT: Strictly speaking it's not a turnover it's
14 an entrusting. Judge Glenn dealt with that issue in Atlas,
15 didn't he?

16 MR. POWER: Yes, particular in a post-liquidation
17 sense. We did, and our orders make clear from -- we sought a
18 lift stay order from Your Honor to even move forward in
19 California to post the 706,000 and then we made clear, before
20 the district judge in California that the posting -- we were
21 preserving all our rights, that this was being posted subject
22 to all the applicable law and that this was merely a mitigation
23 circumstance in which the vessel and its fuel could depart to
24 continue operating, rather than having it tied up for nine --
25 for four to six months pending recognition. And in fact, as we

1 state in our papers, it was unclear at the time and in fact it
2 would have likely been improper for us to appear prior to
3 getting recognition to seek a vacator of any attached --

4 THE COURT: Because Chapter 15 is the gateway into the
5 United States courts.

6 MR. POWER: Yes, Your Honor.

7 THE COURT: Chapter 15 recognition.

8 MR. POWER: Yes, Your Honor. And that relief,
9 specifically, we felt and I believe there's ample precedent for
10 it including a Central District of California case, which I was
11 involved in, in which the court says you cannot appear unless
12 you get Chapter 15 recognition, and that particular case,
13 that's the MV Brigitta, we were merely seeking two weeks to
14 assess the situation to see whether we would be filing a
15 Chapter 15. As opposed to a case like this whereas we would be
16 seeking a vacator.

17 And again, based upon the law which we knew was in
18 place, because we had participated in some of these cases,
19 including Judge Leisure's case, which was also pending before
20 you in a Chapter 15, that's the Britannia Bulk A.S. We
21 essentially knew, based upon the litany of cases, including
22 applicable Second Circuit authority in Cunard and Vitrix (ph.),
23 that it was all but, sort of, a foregone conclusion in our mind
24 that any amounts posted here would be -- would ultimately be
25 released as a liquidation proceeding had already been begun and

1 this was, sort of, a -- this was a prejudgment post-liquidation
2 security context. Which, as the Court has correctly noted,
3 Judge Glenn and also Judge Leisure had stated in those
4 situations that it should be turned over to the trust and care
5 of the receivers in Korea for distribution.

6 THE COURT: Pause please, Mr. Power. Am I correct
7 that in this case, as in I think at least Atlas and perhaps
8 also Britannia Bulkers, World Fuel Services will be free to
9 make whatever arguments it wants in the Korea courts?

10 MR. POWER: Absolutely, Your Honor. Yes. Korea
11 Lines -- the Korean law, like U.S. law, will afford unsecured
12 creditors an opportunity to submit claims and they will be
13 adjudicated in ways similar, which we have submitted some
14 supporting Korea law declarations, but it is not -- it is in no
15 way offensive or outright contrary to U.S. law principles in
16 the way that the estate is administered in Korea.

17 And in fact, again for the record, it seems that -- I
18 understand, based upon my discussions with my client only
19 several days ago, that Global Bonanza, which was the actual
20 owner of this vessel, if we recall Korea Lines owned the fuel
21 that was on this vessel that it was actually chartering from
22 the owner. The owner has made payments to World Fuels and in
23 fact, I understand, has submitted claims in the Korean
24 bankruptcy proceeding for recovery as a non-secured creditor.
25 So in fact not only does Korean law allow it to happen but I

1 understand it is actually happening, that unsecured creditors
2 are submitting claims at this point in time.

3 THE COURT: And what, if anything, in the order you
4 want me to approve would foreclose World Fuel Services from
5 arguing that it's not just an unsecured creditor but it's a
6 secured creditor so long as it goes to Korea?

7 MR. POWER: Well, in fact I don't think it is a
8 secured creditor.

9 THE COURT: I understand your position that it isn't
10 but you're not asking me to decide that issue, right?

11 MR. POWER: I don't think it's necessary. No. Not --
12 that's in the purview of the Korean court, to decide what the
13 nature of and the status of the claim that World Fuel has. In
14 fact, you know, just because it basically raced to the
15 courthouse, so to speak, and attached the vessel once the post-
16 liquidation had been filed in Korea that is not -- U.S. law
17 should -- it would not be appropriate for the bankruptcy court
18 to determine -- to create a secured right whereas there may not
19 be one in Korea just by the fact that they had sought
20 prejudgment security in a post-liquidation context.

21 THE COURT: Okay. Fair enough. All right. Mr.
22 Simms?

23 MR. SIMMS: Your Honor, Mr. Powers is correct. We did
24 talk beforehand.

25 World Fuel, after the payments its received is owed

1 340,642 dollars. So World Fuel is ready to -- I think the
2 present lift stay order allows for this, to put a stipulation
3 into the Central District of California that would immediately
4 release 354,000. That would leave 352,000.

5 We do expect to be paid by the third party that Mr.
6 Power has mentioned, next week, 155,753. When that comes in
7 World Fuel would stipulate to the release of that amount, which
8 would leave -- I'm sorry, 196 is what we'd be paid which would
9 leave 155,000 in the Central District of California.

10 Answering the question why did World Fuel do this?
11 World Fuel believed that it could, that it wasn't restrained by
12 Korean law and the interesting thing about this, Your Honor, is
13 that the Korean receivers in the Korean proceeding, I think
14 there is arguably jurisdiction over World Fuel because there is
15 an affiliate office in Seoul, didn't move for any sort of
16 contempt or anything like that against World Fuel, even though
17 World Fuel went in and attached, after the preservation order
18 was entered.

19 But instead, post-petition, decided through -- in some
20 order of the Korean court, we suppose, because there was a
21 preservation order entered preventing the transfer of any
22 funds, to transfer those funds to the court in the Central
23 District of California. And -- so that's -- it seems to
24 confirm what World Fuel was thinking was perfectly all right to
25 do. And so that is our response to the court on this point.

1 And the fact that it was a post-petition transfer
2 leaves open the question well for what purpose was it? Was
3 it -- there's no allegation that the money just slipped out,
4 Korea Lines doing it by itself, the receivers knew that this
5 was happening. World Fuel views this more as an accommodation
6 to this dispute that it was having with Korea Lines and a first
7 day order to critical vendor and World Fuel was one of the main
8 fuel vendors to Korea Lines, which is still running ships, than
9 it was an attempt to try to nail World Fuel for doing something
10 that was violating the Korea court's order. As a matter of
11 fact, until the reply has come in there's not been any
12 suggestion that World Fuel is in some sort of danger for the
13 Korea bankruptcy.

14 And so that's why World Fuel did what it did and
15 here's where we are with money -- and this is -- makes the case
16 distinct from the Britannia case and the other that they're
17 talking about, because here there is money deposited into the
18 Central District of California and when the Central District
19 issued its order providing for that deposit, it said that the
20 money could be dispersed pursuant to the order of the
21 bankruptcy court and that court.

22 THE COURT: Well, doesn't it say and/or, Mr. Simms?

23 MR. SIMMS: Yes, sir.

24 THE COURT: Well and/or is different than and, isn't
25 it?

1 MR. SIMMS: And/or and and, Your Honor, the way that
2 we would read that is that there would be an order of this
3 Court, which the Central District then would take for release
4 of the -- and consider for the release of the funds or there
5 would be a release of that order of the Central District court.

6 And searching the case law on the question of whether,
7 and considering we have two Article III courts, one Article III
8 court can order another to do something. I don't think it's as
9 clear as the receivers would like it to be.

10 I was looking at the subsequent proceedings in this
11 International Banking Corporation case, which was Judge
12 Bernstein's case. And the receivers said yes, the court has
13 considered whether it can order a state court to let go of
14 money deposited with a state court, I think there it was with
15 the sheriff of the Supreme Court. And the way it was resolved
16 on May 11th, docket number 80, was that the parties agreed to
17 lift stay to then go back to the state court and determine what
18 had happened to the money. And so that's what World Fuel would
19 say should happen here, because there's never been, as far as
20 we can tell, a situation where when you have a maritime remedy
21 and there's a rest, which is what the court's jurisdiction
22 depends on, another court has said you have to give up that
23 rest.

24 In the -- I think in the Britannia proceedings it was
25 the same court, it was the Southern District Bankruptcy Court

1 ordering the release of the rest before, which wasn't even held
2 by the -- in the court registry, it was held by a bank. The
3 same court here, though, you've got coming into this 28 U.S.C.
4 2042 which says no money deposited under section 2041, which is
5 what it was deposited under, shall be withdrawn except by order
6 of court. The question is, okay, does that mean any court?
7 Does that mean the specific court that ordered the deposit? No
8 limitations on it.

9 But what World Fuel would certainly agree to do is, if
10 there's necessarily a lift stay, to go to the Central District
11 of California and have the Central District affect, which the
12 receivers would do, that this Court's order of release, that
13 that's the place to have the question of what happens to the
14 remaining money resolved.

15 THE COURT: Okay. Anything else, Mr. Simms?

16 MR. SIMMS: (No response).

17 THE COURT: Mr. Simms, anything else?

18 MR. SIMMS: (No response).

19 THE COURT: Mr. Simms, are you still with us?

20 MR. SIMMS: Yes, sir.

21 THE COURT: Do you have any further comments?

22 MR. SIMMS: No, sir.

23 THE COURT: Okay. Mr. Power, reply?

24 MR. POWER: Yes, Your Honor. I'd like to, perhaps,
25 just simplify exactly what happened in this particular case,

1 that Your Honor was part of some of the proceedings, because we
2 had sought Your Honor's authority and order to allow Korea
3 Lines, the receivers, to move forward with negotiations as they
4 saw fit in a post-liquidation context, wherein they had their
5 cargo -- their fuel oil onboard a vessel that they had
6 chartered, currently under attachment in a port in California,
7 within the jurisdiction of the Central District of California.

8 The receivers, in this particular context, obviously
9 were charged with management of the company. The
10 rehabilitation proceeding is one akin to a Chapter 11, in which
11 the company is an ongoing concern. They have to make business
12 decisions on a daily basis.

13 It stretches no bounds of the imagination that coming
14 up with 706,000 dollars as a payment, where they could achieve
15 the immediate result of its vessel and the cargo for the vessel
16 to continue to move on, earn money, preclude claims from cargo
17 and also, most importantly, limit the amount of accruing
18 damages, both to World Fuels if in fact it was determined that
19 they wrongly attached a vessel. If we elected not to do
20 anything the vessel would have stayed, under attachment, in
21 California for no less than a period of two to three months
22 because we would not have been able to make, under the law as
23 we see it, and that's the Brigitta case in Comtrex (ph.), we
24 would not have been able to make any case vacating the
25 attachment until we had recognition before Your Honor.

1 So if Mr. Simms is asserting before Your Honor today
2 that through -- obviously through force of hand of having one
3 of its assets attached, that Korea Lines could not make a
4 business decision and exercise its right, under the admiralty
5 rules, to post substitute security to have a vessel released, I
6 think that it basically turns any rehabilitation proceeding on
7 its head in that you would have these unsecured, prejudgment
8 creditors attaching assets and having, basically, the assets
9 stay immobile, preclude them from having -- earning any income,
10 which is obviously the nature of the entire business of Korea
11 Lines, up until the time where a Chapter 15 proceeding is
12 granted.

13 And then what would we have, and Mr. Simms could
14 attest to this, the cost of having a vessel be maintained in
15 the port of Long Beach, the cost of having the crew, the cost
16 of having the wharfage, not to mention, obviously, the delays
17 in delivery of cargo and so forth.

18 So obviously it stretches no bounds to -- for this
19 Court to see that the judgment made by the Korean receivers in
20 a post-liquidation context in their -- as they were charged
21 with their duty of running the company, this was made in a
22 purely mitigation factor. That the money here was -- came to
23 the United States for the purposes of allowing the vessel to
24 continue to trade. And it was not done so in any offense to
25 U.S. law, because in fact U.S. law allows to any owner of a

1 vessel or owner of property that's been attached under
2 admiralty rules, to post substitute security. And as we've
3 cited in our reply memorandum, substitute security is exactly
4 what it is. It's a substitute for the rest to allow a vessel
5 to go out and trade and they would have a set amount of money
6 here. In fact, Mr. Simms had asked for significantly more, 1.2
7 million and 1.7 million. And what we had determined was, at a
8 maximum he would only be entitled to the amount of the cargo --
9 I'm sorry; the amount of the fuel and we determined that the
10 amount of the fuel was 706,000. So that is all we elected to
11 post. We didn't elect to give him the entirety of his claim in
12 substitute security; only what was legally allowable for us to
13 post, which was the value of the property attached. And we
14 determined, and Mr. Simms agreed, that the value of the
15 property attached was 706,000 dollars and that's all we posted
16 and then the vessel sailed away.

17 And I think when we came to this Court to get that
18 order, I think the Court knew exactly what we were doing in
19 that we -- and we advised the Court clearly, Your Honor, as
20 well as the California court. And it's clear with the savings
21 clauses that we had in here, that all parties reserve each of
22 their rights.

23 We were not -- we were posting this with the
24 intention, and Mr. Simms knew that because we disclosed that,
25 with the intention of seeking a turnover order when it was

1 proper and that is upon recognition. And now we are here to
2 the Court today asking the Court for something that we had
3 intended to do, which is seek a turnover order, from day 1 when
4 the 706,000 dollars was posted.

5 And I also would like to make one further point. This
6 case is -- is simple in the context that we are not faced with
7 a California District Court Article III judge order granting
8 custodia legis fees. In other words, I would submit that for a
9 California district court to move forward with making a
10 determination of custodia legis fees and trying to award them,
11 that they would need permission from this Court to do so,
12 because it would affect the assets of the estate.

13 So we are not faced with an order granting custodia
14 legis fees. We are only faced, at this point in time, with
15 money that World Fuel says should -- money of the Korea Lines
16 estate which World Fuel says it should be given an award of
17 custodia legis fees out of these funds.

18 So I think that's a marked difference and one that may
19 have different consequences. But here luckily enough, I think,
20 for Korea Lines and for the deliberations of this Court, we are
21 not faced with any district court order awarding any custodia
22 legis fees. So they are free to be transferred over without
23 any impending contrary order from an Article III district
24 judge.

25 THE COURT: Anything further, Mr. Power?

1 MR. POWER: No, Your Honor.

2 THE COURT: All right. Have a seat, both sides
3 please.

4 (Pause)

5 THE COURT: Gentlemen, I'm granting the petitioner's
6 motion with some refinements. Those refinements, principally
7 to more closely conform my ruling to the words and rationale
8 used by my colleague, Judge Glenn, in the astoundingly similar
9 case of In re Atlas Shipping AS, 404 B.R. 726 and the similar
10 analysis by Judge Leisure of the district court in this
11 district in Britannia Bulkers, CSL Australia Party Limited vs.
12 Britannia Bulkers, 2009 Westlaw 2876250.

13 And because I have such a busy calendar today, I'm not
14 going to speak at the same length that I would otherwise. I'm
15 going to summarize the bases for this decision, reserving the
16 right to issue a written decision or a more lengthy dictated
17 one if either side, presumably World Fuel Services, chooses to
18 appeal or, though I would hope it wouldn't, to collaterally
19 attack my order somewhere else. My findings of fact and
20 conclusions of law for this determination follow.

21 First, the facts, at least as relevant here, are
22 undisputed. After the commencement of the insolvency
23 proceeding in Korea but before recognition had been obtained in
24 this district in the Chapter 15 case that was filed here in New
25 York, World Fuel Services sought and obtained an attachment

1 under the applicable admiralty rules in the Central District of
2 California, of the value of the bunkers then estimated to be
3 approximately three quarters of a million dollars. And
4 because, as a consequence of that attachment, the transport of
5 that ship in international commerce would be blocked until and
6 unless substitute collateral were posted, which would enable
7 that ship to sale.

8 With an appropriate reservation of rights, the
9 petitioners of Korea Line's substituted collateral in
10 substance, which then permitted the ship to sale and now the
11 receivers are asking me to direct that the collateral that had
12 been posted in place of the whole ship and its bunkers be
13 entrusted to the Korean receivers for determination by the
14 Korean court of the claim that World Fuel Services would wish
15 to assert.

16 There is a dispute as to the parties as to whether
17 World Fuel Services' claim, when heard in Korea, would be an
18 unsecured claim on the one hand, or would be secured on the
19 other. And I state, for the avoidance of doubt, that nobody
20 here in the United States is asking me or the Southern --
21 excuse me -- Central District of California to determine the
22 exact amount of the World Fuel Services' claim or whether it is
23 secured on the one hand or unsecured on the other.

24 The order that is requested from me would be without
25 prejudice of the rights of either side to argue what it wishes

1 to argue and most significantly, without prejudice to the
2 rights of World Fuel Services to argue to the Korea court that
3 its attachment was valid, even though it would at least seem,
4 if not be undisputed, that World Fuel Services got its
5 attachment in violation of Korean law, which like American law,
6 would say that you can't grab assets of a debtor after the
7 filing of a petition to try to get a leg up against fellow
8 creditors.

9 This issue ultimately, of course, is one as to the
10 comity, that we grant to the foreign courts in their insolvency
11 proceedings and the extent to which U.S. courts would be used
12 as a means to get for one creditor to get a leg up against
13 other creditors.

14 Now this is a Chapter 15 case. Chapter 15s are heard,
15 since 2005, under a statutory scheme that in some respects has
16 common principles but in several respects has different
17 mechanics than the law we had prior to 2005 when U.S. courts
18 used to implement their comity in favor of foreign
19 jurisdictions under old Section 304 of the Code.

20 The Second Circuit, in its decisions in Cunard and
21 Vitrix, both of which were 305 decisions rather than 15 --
22 Chapter 15 decisions, rather than 1521 decisions in particular,
23 emphasized how we U.S. courts grant comity to the insolvency
24 proceedings in foreign courts to help those foreign courts
25 secure a quality of treatment amongst all of the creditors that

1 are before them.

2 There are occasional exceptions where those foreign
3 courts don't grant the same fair treatment of creditors that
4 we're used to. But there has been understandably no contention
5 here that the courts of South Korea are in that category.

6 So then we deal with whether, with the enactment of
7 Chapter 15, there was any intent by Congress to change the
8 comity that we accord foreign proceedings and, of course, we
9 know that the purpose of Chapter 15, as articulated in Section
10 1501 of the Code, underscores its purpose to provide
11 cooperation between the courts of the U.S. and the courts and
12 other competent authorities of foreign countries involved in
13 cross-border insolvency cases.

14 Then when we go, as I normally do, to textual
15 analysis, we know that one change between 304 proceedings, on
16 the one hand, and Chapter 15 cases on the other, is that now
17 under Chapter 15 recognition is what amounts to the entry point
18 into the U.S. courts. And that the hands of a prospective
19 Chapter 15 representative are tied until recognition is
20 obtained. It's for that reason that we have 1519 interim
21 relief which prevents creditors, like World Fuel Services, from
22 grabbing assets but which limits the ability of a Chapter 15
23 representative to fully appear in the U.S. courts until
24 recognition is obtained. That recognition was obtained later
25 but it wasn't obtained, nor could it be obtained, for several

1 weeks after the filing of the Chapter 15 case here.

2 Now I said that I was granting the relief sought in
3 substance but I was using the articulation used by Judge Glenn.
4 Judge Glenn relied, properly in my view, in fact it's the
5 traditional way of doing it, on 1521(a)(5) of the Code and
6 1521(b). 1521(a)(5) says that, "Upon recognition of a foreign
7 proceeding, whether main," and I say parenthetically that we
8 have a main recognition here, "where necessary to effectuate
9 the purpose of Chapter 15 and to protect the interests of the
10 creditors," that, of course, is all of Korea Line's creditors,
11 "the Court may, at the request of the foreign representative,
12 grant any appropriate relief including (5) and trusting the
13 administration or realization of all or part of the debtors'
14 assets within the territorial jurisdiction of the U.S. to the
15 foreign representative".

16 Likewise (b) of 1521 provides, "Upon recognition of a
17 foreign proceeding, whether main or non-main, the Court may, at
18 the request of the foreign representative, entrust the
19 distribution of all or part of the debtors assets, located in
20 the U.S., to the foreign representative provided that the court
21 is satisfied that the interests of creditors in the U.S. are
22 sufficiently protected".

23 I need not decide, and do not decide today, whether I
24 would have a different rule of law for U.S. creditors on the
25 one hand or those that are merely foreign creditors on the

1 other, who have somehow secured jurisdiction in the U.S.
2 courts. Frankly, and I'll admit that this is rank dictum, I
3 would be uncomfortable about giving a leg up to U.S. creditors
4 over foreign creditors by reason of the happenstance of their
5 grabbing assets in the U.S. But I don't need to confront that
6 issue here because World Fuel Services is not a U.S. creditor.

7 I would, of course, be concerned if U.S. creditors
8 didn't get a fair shake in the foreign jurisdiction. But
9 again, there's been no contention here that that's so and that
10 issue isn't before me.

11 So then we get to the underlying law as to whether, in
12 the interest of comity, we provide assistance to the Korean
13 courts in this post-304 era, just as the Second Circuit told us
14 to do in the pre-Chapter 15 era in Cunard and Vitrix, and I
15 hold that we do. But of course I'm breaking no ground because
16 that's exactly what Judge Glenn said in Atlas and what Judge
17 Leisure said in Britannia Bulk.

18 Now to be sure, those cases evolved out of a context
19 slightly different than that which we have here, because they
20 represented manifestations of a practice, some would say an
21 ugly or infamous practice, of intercepting electronic transfers
22 to enforce admiralty claims. And here we had a different
23 practice, which was attaching the bunkers, and therefore the
24 ship, which in some respects is different mechanically and
25 which, at the risk of stating the obvious, is much more

1 Draconian to a debtor running a shipping company. You're
2 freezing the whole, put in your own adjective, ship to collect
3 this unsecured claim.

4 The effect upon the reorganization, whether that
5 reorganization were taking place in the U.S. on the one hand or
6 in Korea on the other is obvious. And in reality, and we
7 courts like to look at reality, with having its ship frozen,
8 not being able to appear in any U.S. court other than the
9 federal bankruptcy court in the Southern District of New York
10 because of the way Chapter 15 is now structured, having its
11 hands tied the receivers here had a gun to their head and as a
12 consequence they substituted collateral. So we could, at
13 least, get that ship moving again in international commerce and
14 permit value to be maximized for the entirety of Korea Lines'
15 creditor community and not just the favored creditor or
16 creditors who could proceed with the attachment.

17 At the risk of stating the obvious, attaching assets
18 so that one creditor can get a leg up against all of the other
19 creditors is an anathema under U.S. law and under Korea law.
20 And when the Korean courts prohibit that, we are not only not
21 acting contrary to Korea law or U.S. law, we are implementing
22 important values shared by the law of both countries.

23 Now this would be a blue Buick, a case exactly on
24 point under Atlas Lines and under Britannia Bulkers, save and
25 except only for the one fact that here the receivers, with the

1 gun to their head, had to substitute collateral. That's a
2 distinction without a difference.

3 We are faced here with a situation where simply the
4 collateral has been substituted, one for the other but the
5 spirit, if not the letter of Cunard, Vitrix as well as Atlas
6 and Britannia Bulkers tell us that we're not going to allow the
7 happenstance of the gun to the head, especially when, A, Korea
8 Lines' receivers could not appear in the Central District of
9 California until they were recognized here in the U.S. in
10 Chapter 15, B, because there is a full reservation of rights
11 and C, because the receivers here expressly reserve their
12 rights. The same principles that caused the entrusting by
13 Judge Glenn there result in the same relief granted here.

14 Lastly, and I apologize if the order is imperfect
15 because I've been speaking off notes rather than a script, I do
16 emphasize that if and to the extent World Fuel Services wants
17 to make these arguments in Korea, that it's having secured an
18 attachment there, albeit in violation of Korea law, gave it
19 secured status in Korea, it is free to do that.

20 I am not deciding any questions of Korea law. I am
21 not deciding the extent, if any, to which World Fuel Services
22 has a secured claim in contrast to an unsecured claim. I am
23 not deciding the extent, if any, to which it should get special
24 treatment vis-a-vis the claim of 18,000 dollars, or
25 thereabouts, for the costs associated with the attachment and

1 putting cash into what we have referred to in shorthand as
2 custodia legis expenses.

3 I also state, for the avoidance of doubt, that I'm not
4 telling my colleague, especially a Chapter 13 colleague in the
5 Central District of California what to do. Nothing in my order
6 granting this entrusting breaches an order out of the Central
7 District of California.

8 Whenever a court uses the words and/or it does place a
9 certain ambiguity into the order, no doubt because that was the
10 order that was presented to the California court, but even if
11 it's otherwise, I have confidence that given the principles of
12 comity, the principles of avoiding the favoritism of one
13 creditor against all creditors and the backdrop of the
14 decisions of Atlas and Britannia Bulkers by Judges Glenn and
15 Leisure, respectively. I have substantial comfort that I'm not
16 creating a war between this district and the Central District
17 of California.

18 For the foregoing reasons the debtors are to look over
19 their proposed order to ensure that it doesn't say turnover and
20 that instead it stays entrusting. That avoids the need for me
21 to wrestle with whether an adversary proceeding would be
22 required and more comfortably fits with the earlier holdings in
23 this area and the language of the code. The statutory
24 predicates for this relief are 1521(a)(5) and 1521(b).

25 As in Atlas, I'm authorizing the entrusting of the

1 substitute collateral that was previously posted in the Central
2 District of California to the receivers here, subject to the
3 further order of the Korean court. If either side wants to
4 appeal I do, as I indicated, reserve the right to supplement
5 this because I've used shorthand that's familiar to bankruptcy
6 judges, which may not be as familiar to judges who don't deal
7 with this all the time.

8 But this, gentlemen, frankly is a no-brainer, one of
9 the easiest decisions I've had in a while in the Chapter 15
10 area or otherwise.

11 Mr. Power, you are to settle an order in accordance
12 with the foregoing on no less than one calendar week's notice
13 by hand, fax or e-mail and you're to add an extra week if you
14 elect to settle the order by snail mail.

15 Not by way of re-argument, are there any open issues?
16 First you, Mr. Power.

17 MR. POWER: No, Your Honor.

18 THE COURT: Mr. Simms?

19 MR. SIMMS: No, sir.

20 THE COURT: Very well. Thank you, gentlemen. Have a
21 good day.

22 MR. SIMMS: Thank you.

23 (Whereupon these proceedings were concluded at 11:32 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Pnina Eilberg, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Pnina Eilberg

Digitally signed by Pnina Eilberg
DN: cn=Pnina Eilberg, c=US
Reason: I am the author of this document
Date: 2011.06.28 13:24:04 -04'00'

PNINA EILBERG

AAERT Certified Electronic Transcriber CET**D 488

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: June 28, 2011

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